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Human rights situation in Palestine and other occupied Arab territories

Joint written statement* submitted by Al-Haq, Law in the Service of Man and the Cairo Institute for Human Rights Studies, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Israeli occupation further entrenched with business operations: Update on wineries, banks, fisheries and other industries in the Occupied Palestinian Territories.

Over the past 50 years, corporations have played a central role in sustaining, expanding, and strengthening Israeli occupation in Palestinian territory. Indeed, the occupation has been lucrative to both the Occupying Power (Israel) and business enterprises. A welcome focus is being placed on the role of businesses in the context of conflict and occupation, in the Occupied Palestinian Territory (OPT) specifically. In reality, corporations will continue to contribute to the exploitation of Palestinian land and resources until adequate action is taken by the international community in line with international law.

International law sets duties upon states to protect against human rights abuses and fulfil relevant obligations in their jurisdiction, and expectations for non-state actors, including the private sector and business enterprises, to abide by and respect human rights. The regulation of business enterprises under international law has been exclusively addressed through soft law mechanisms, and in the absence of a binding treaty that could ensure commitment to human rights standards. The UN Guiding Principles on Business and Human Rights (UNGPs), based on existing international laws, are applicable to all states and business enterprises, aims to protect individuals and communities against corporate abuse, including in times of conflict, through a shared responsibility between states and corporations; a duty to protect and a responsibility to respect human rights respectively, and the right of victims to access remedy. In a situation of conflict, considering the enabling environment for the commitment of grave violations which may amount to internationally recognized crimes, both states and corporations (as non-state actors) are expected to respect the laws of armed conflict as well as international human rights norms.1

Since 1967, Israel has occupied the West Bank, including East Jerusalem, and the Gaza Strip. During this time, Israel continued with colonial ambitions to annex Palestinian land and natural resources, reaping economic benefits for the Israeli national and settler economy. In the same vein, Israel's control of resources in occupied territory has been accompanied by a firm grip on the Palestinian economy and market, stifling it and leading to its de-development and captivity. For example, approximately 90 per cent of the Jordan Valley area in the West Bank falls under Israeli military and administrative control. This has translated into discriminatory policies for planning, zoning, building, and designation of land thus prohibiting and preventing Palestinians from developing the area, and creating coercive environments leading to cases of forcible transfer.2 In fact, Israel's continuing restrictions imposed on Area C have posed serious challenges to the Palestinian economy and is expected to deprive it of 33 per cent of its economic growth by 2050.3

Israel's expanding settlement enterprise has had detrimental effects to the lives and livelihoods of Palestinians in the OPT, specifically in the West Bank. This is illustrated in Israel's relentless policy to confiscate and appropriate

1 ICRC, Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law, available at: https://shop.icrc.org/les-entreprises-et-le-droit-international-humanitaire-introduction-aux-droits-et-obligations-des-entreprises-au-regard-du-droit-international-humanitaire-2571.html, p.14

2 Al-Haq, Settling Area C: the Jordan Valley Exposed, January 2018, available at: http://www.alhaq.org/publications/publications-index/item/settling-area-c-the-jordan-valley-exposedcategoryid10?category_id=7, p.16-20.

3 World Bank, Economic Monitoring Report to the Ad Hoc Liaison Committee, 18 September 2017, available at: http://documents.worldbank.org/curated/en/515891504884716866/Economic-monitoring-report-to-the-Ad-Hoc-Liaison-Committee

Palestinian land. For example, in 2016 Israel appropriated 2,342 dunums of Palestinian agricultural land near Jericho,4 and restricted 550 dunums in the northern Jordan Valley, wherein 25 families reside, from Palestinian access and construction in 2017.5 In addition to settlers' constant harassment and physical attacks against Palestinians, settlements have also infringed on Palestinians' right to self-determination and permanent sovereignty over natural resources. Israel's settlement enterprise has further compromised Palestinian territorial contiguity in the OPT, and limited Palestinian freedom of movement, obstructing their access to healthcare, education, holy sites, as well as employment, and right to development.

In addition to the economic and physical support and incentives granted by the State, settlements – whether residential, industrial, or agricultural – have benefited from Israeli and multinational corporations conducting activities in or with settlements, helping their economy thrive and prosper thus sustaining their illegal presence. Looking at the agricultural industry, mainly located in agricultural settlements in the Jordan Valley within the OPT, and which ranges from date and grape farming to packing and refrigeration services, its profits have been estimated at $128 million/year,6 significantly depending on export to maximize profit.

For example, Israeli settlement wineries have played a key role in generating profits, especially those acquired from exports. To strengthen settlement wineries, they have been normalized and integrated with other Israeli wineries. These include the Shiloh Winery in the Shiloh settlement in Nablus, the Psagot Winery near Ramallah, the Zion Winery in Mishor Adumim settlement, among others.7 Settlement wineries have marketed their products internationally, at times based on falsified narratives,8 in order to attract the interest and support of international business in the industry – all while confiscating and exploiting occupied Palestinian land and natural resources. This is exemplified in the recent news on the Chinese Hubey Pendgun Group's intent to partner up with the Hayotzer Winery,9 a subsidiary of the Arza Group,10 located in Mishor Adumim settlement. Such partnerships and investments provide Israeli businesses in the OPT with one of the most essential tools for survival and expansion i.e. revenue. This completely disregards Palestinians' right to control, access, and develop their natural resources. The partnerships and investments ultimately provide for settlers' sustainability, allowing them to remain in the OPT, and encourages others to join, in contravention of Article 49 of the Fourth Geneva Convention.

Furthermore, the contribution of Israeli and international banks towards the construction and expansion of settlements in the OPT has been imperative. Banks have provided financial means to construct settlements and supply them with services, such as electricity, both directly and indirectly.11 In 2013, the UN independent fact-finding mission report specifically highlighted the role played by banks to "develop, expand or maintain settlements and their activities,

4 Reuters, "Israel Seizes Large Tracts of Land in West Bank, Report Says" (Haaretz, 15 March 2016), available at: https://www.haaretz.com/israel-news/report-israel-seizes-large-tracts-of-land-in-west-bank-1.5418058

5 Al-Haq field documentation, November 2017.

6 Al-Haq, Business and Human Rights in Palestine, 2016, available at: http://www.alhaq.org/publications/publications-index/item/business-and-human-rights-in-palestine?category_id=10, p.16.

7 See map at: Israel Wine Producers Association, available at: http://iwpa.com/map.php

8 Al-Haq, Grapewashing the Occupation: The Case of the Chinese Hubey Pengdun Group, 16 January 2018, available at: http://www.alhaq.org/advocacy/topics/business-and-human-rights-focus/1171-grapewashing-the-occupation-the-case-of-the-chinese-hubey-pengdun-group

9 Ora Coren, "Israeli Firm in Talks to Build Winery in China", (Haaretz, 4 September 2017), available at: https://www.haaretz.com/israel-news/business/israeli-firm-in-talks-to-build-winery-in-china-1.5448024

10 See: Wines Israel at: Winesisrael.com/en/4541/hayotzer-93-points/ and wineisrael.com/en/4361/hayotzer-to-china/.

11 FIDH, French Banks' Dangerous Liaisons with the Israeli Settlement Enterprise, March 2017, available at: https://www.fidh.org/IMG/pdf/20170327_banquepalestine_anglais_fc_v7.pdf (hereinafter FIDH, French Banks' Dangerous Liaisons)

including loans for housing and the development of businesses."12 In addition to Israeli banks,13 international banking groups, such as the French banks of BNP Paribas, Societe Generale, Credit Agricole and its subsidiaries, have been involved in the development of Israeli settlements in the OPT, including by providing loans for services and infrastructure projects in settlements.14

In the Gaza Strip, Israel's imposed eleven-year closure has had a serious negative impact on the economic, social, political and civil rights of the Palestinian population therein. While Israel claims the security pretext, the closure has had its conspicuous aims to sustain Israel's control over gas platforms and pipelines in the area,15 resulting in a dire economic situation, including high unemployment rates and food shortages. The fishing industry has been severely restricted due to partnerships made by Israel and companies such as Noble Energy to exploit gas 13 nautical miles from the Palestinian coast. Fishermen in Gaza have been repeatedly subjected to Israel's excessive use of force, embodied in: physical attacks, the confiscation of equipment, and detention.

The examples provided above demonstrate that business enterprises continue to be active in and contribute to Israel's prolonged occupation, particularly in the context of settlements and stifling the Palestinian economy and livelihoods. As such, corporations need to be held to account for their involvement in human rights violations, especially where such activities may amount to war crimes. Further, corporations should stand by their responsibility to respect human rights, through a human rights due diligence process to 'identify, prevent, mitigate' their adverse human rights impacts.16 This is where states are required to uphold their obligations under international law and engage with corporations within their jurisdiction which operate in conflict-affected areas, including by taking preventive measures and denying them public support and services, when involved in grave human rights abuses, and as part of a domestic regulation approach towards businesses' extraterritorial activities.17

12 UN independent fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Territory including East Jerusalem, p.20

13 Israeli banks include: Bank Happalim, Bank Leumi, First International Bank of Israel, Israel Discount Bank, Mizrahi Tefahot Bank, Jerusalem Bank, Union Bank; see Who Profits, Financing the Israeli Occupation – the Direct Involvement of Israeli Banks in Illegal Israeli Settlement Activity and Control over the Palestinian Banking Market, 2010, available at: https://whoprofits.org/sites/default/files/WhoProfits-IsraeliBanks2010.pdf, Appendix A.

14 FIDH, French Banks' Dangerous Liaisons

15 Al-Haq, Israel's Deadly Catch, November 2015, available at: http://www.alhaq.org/publications/publications-index/item/israel-s-deadly-catch?category_id=4

16 UNGPs, Principles 15–21.

17 UNGPs, Principle 2, 7.